IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1178 of 1986

with

CRIMINAL APPEAL No 198 of 1987

For Approval and Signature:

HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

VINUBHAI ISHWARBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Criminal Appeal No. 1178 of 1986
   MR BJ JADEJA for Petitioner No. 1
   MR PRACHHAK APP for Respondent No. 1
2. Criminal Appeal No. 198 of 1987
   MR PRACHHAK APP for Petitioner No. 1
   MR BJ JADEJA for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE B.J.SHETHNA
and
HON'BLE MR.JUSTICE J.R.VORA

Date of decision: 07/04/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE B.J.SHETHNA)

#. Both these appeals are disposed of by this common judgment as they are arising out of the impugned judgment and order dated 6.9.1986 passed by the learned Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No.71/86.

#. Three accused persons; (1) Vinubhai Ishwarbhai Patel; (2) Bhaijibhai @Deno Mohanbhai Chauhan and (3) Ravjibhai Becharbhai Chauhan were tried before the Ld. Addl. Sessions Judge, Kheda at Nadiad in Sessions Case No.71/86 for the offences punishable u/Ss.302 and 201 of the IPC. The accused No.1-Vinubhai Ishwarbhai Patel faced the trial for the offence u/S.302 of the IPC for committing murder of deceased-Vinubhai Shivabhai Patel, husband of Ramilaben on 10.1.1986 between 8.30 to 9.00 a.m. at village Vanthvali by giving knife blow on the abdomen of the deceased. Whereas, all the accused, including accused No.1-Vinubhai Ishwarbhai Patel faced trial for the offence u/S.201 of the IPC for concealing commission of offence. On the conclusion of the Trial, the learned Trial Judge came to the conclusion that the prosecution failed to prove the charges against two accused persons viz.; (1) Bhaijibhai @Deno Mohanbhai Chauhan and (2) Ravjibhai Becharbhai Chauhan for the offence u/S.201 of the IPC, therefore, he ordered to acquit them. The learned Trial Judge also acquitted accused No.1-Vinubhai Ishwarbhai Patel for the offence u/S.201 of the IPC. However, he came to the conclusion that the accused No.1-Vinubhai Ishwarbhai Patel had caused death of deceased-Vinubhai Shivabhai Patel on 10.1.1986. However, he was of the opinion that the accused cannot be convicted for the major offence u/S.302 of the IPC and, therefore, he convicted accused No.1-Vinubhai Ishwarbhai Patel for the lesser offence u/S.304 Part-II of the IPC and sentenced him to suffer 3 years RI, keeping in mind the fact that the accused No.1 was a young boy and the incident had happened in heat of passion.

#. Being aggrieved by the aforesaid judgment and sentence dated 6.9.1986 passed by the learned Trial Judge convicting him u/S.304 Part-II of the IPC and sentencing

him to suffer RI for 3 years, the appellant-original accused No.1-Vinubhai Ishwarbhai Patel filed above Criminal Appeal No.1178/86 before this court, which was admitted by the learned Single Judge of this court on 10.10.1986 and he was directed to be enlarged on bail. Since then he is on bail.

#. Being aggrieved by the aforesaid impugned judgment passed by the learned Trial Judge acquitting the appellant-original accused No.1-Vinubhai Ishwarbhai Patel for the major offence u/S.302 of the IPC, the State of Gujarat had filed above acquittal appeal i.e. Criminal Appeal No.198/87, which was admitted by the Division Bench of this court on 19.8.1987.

#. Both the above appeals were placed for final hearing on 11.3.2004. On 11.3.2004 on the request made by Mr.Jadeja, learned counsel for the appellant-original accused No.1-Vinubhai Ishwarbhai Patel, both these matters were kept on 24.3.2004. On that day i.e on 24.3.2004 we had practically heard Mr.Jadeja for the appellant-accused for the whole day and at the end of hearing, Mr.Jadeja submitted that the unfortunate incident in question took place way back on 10.1.1986 i.e. more than 18 years from that day in heat of passion for which the appellant-accused No.1-Vinubhai Ishwarbhai Patel was convicted for the offence u/S.304 Part-II of the IPC and suffered to sentence 3 years R.I. by the learned Trial Judge. He has been given set off for the period during which he remained in jail as under-trial prisoner, which was 9 months and, therefore, it would not be proper to ask him to surrender for undergoing the remaining sentence imposed by the learned Trial Court. He submitted that the appellant-accused was repenting for this period of almost two decades after the unfortunate incident and he had all sympathy for Smt.Ramilaben, widow of Vinubhai Shivabhai Patel, whose husband died in the unfortunate incident. Smt.Ramilaben had three minor daughters. They were grown up by Ramilaben with the help of her relatives and she got all the three daughters married. Now, she is staying with her sister-Sarojben and her husband, who coincidently happens to be her brother-in-law because both the sisters married with two real brothers. Mr.Jadeja further submitted that Ramilaben, widow of Vinubhai Patel filed suit before the Civil Court at Nadiad seeking compensation of Rs.1,00,000/= from the appellant-accused on the death of her husband, who was killed in the incident. Mr.Jadeja submitted that the suit would take some time more and ultimately nobody knows the result of it. However, he had shown readiness and willingness of the

appellant-accused to adequately compensate Ramilaben by offering her Rs.2,50,000/=.

In view of the above, by brief speaking order dated 24.3.2004 notice was ordered to be issued to Ramilaben, widow of deceased-Vinubhai Shivabhai Patel for personally remaining present before this court on 7.4.2004 i.e. today at 11.00 a.m. Accordingly, she has personally remained present before this court along with her brother-in-law-Anil Shivabhai Patel and her two sons-in-law, Hemendrakumar Jagdishbhai Patel and Vishnu Punambhai Patel. She stated before us that at present she is staying with her younger sister-Sarojben Mahendrabhai Patel, who happens to be her brother-in-law also as both the sisters got married with two real brothers. She is ready and willing to accept the cheque of Rs.2,50,000/= and in lieu of that she would not press her suit filed in forma pauper before the court of Nadiad seeking compensation of Rs.1,00,000/= from the appellant-accused No.1-Vinubhai Ishwarbhai Patel. She has also stated that in view of the gesture made by the appellant-accused, sentence of 3 years imposed by the learned Trial Judge be reduced as sentence already undergone. She further stated that out of amount of Rs.2,50,000/=, she will keep cash of Rs.50,000/= with her and deposit the remaining amount of Rs.2,00,000/= in Bank of Baroda, Vanthvali Branch for a period of 5 years and maintain herself from the interest accrued on it.

#. In view of the above, learned APP, Mr.Prachhak appearing for the respondent-State in both the appeals has no objection for reducing the sentence of 3 years RI imposed by the Trial Court for the offence u/S.304 Part-II of the IPC. However, he submitted that this may not become precedent. It goes without saying that this order is passed on peculiar facts and circumstances of the case, therefore, there is no question of it becoming precedent.

#. In view of the above discussion, Criminal Appeal No.1178/86 filed by the appellant-accused No.1-Vinubhai Ishwarbhai Patel is partly allowed only on the point of sentence by reducing the sentence of 9 months as already undergone by the appellant-accused, on his tendering an account payee cheque of Rs.2,50,000/= dated 22.4.2004 drawn on Bank of Baroda in the name of Ramilaben Vinubhai Patel to Ramilaben, who is personally present before the court along with her relatives, while confirming the order of conviction recorded by the learned Addl. Sessions Judge, Kheda at Nadiad convicting the appellant-accused No.1-Vinubhai Ishwarbhai Patel u/S.304

Part-II of IPC. The appellant-original accused No.1-Vinubhai Ishwarbhai Patel is at present on bail, therefore, his bail bonds stands cancelled.

As above Criminal Appeal No.1178/86 is partly allowed on the point of sentence, therefore, acquittal appeal i.e. Criminal Appeal No.198/87 filed by the appellant-State of Gujarat is required to be dismissed and accordingly it is dismissed.

We may make it clear that if the cheque of Rs.2,50,000/= is not honoured, then not only both these appeals would automatically stand revived, but the appellant-accused of the Criminal Appeal No.1178/86 would be liable for contempt proceedings. We also make it clear that on the aforesaid cheque of Rs.2,50,000/= being honoured, suit filed by Ramilaben, widow of Vinubhai Shivabhai Patel against the appellant-accused Vinubhai Ishwarbhai Patel would not survive and it would stand disposed of, as stated by plaintiff-Ramilaben Vinubhai Patel.

(B.J.Shethna, J.)

(J.R.Vora, J.)

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